

# UNITED STATES DISTRICT COURT

for the

Western District of North Carolina

|   |   |                                 |
|---|---|---------------------------------|
| United States of America                          | ) |                                 |
| v.  | ) |                                 |
| Herbert Kent Harbison                             | ) | Case No: <u>1:00CR9-6</u>       |
|   | ) | USM No: <u>15811-058</u>        |
| Date of Previous Judgment: <u>12/13/00</u>        | ) | <u>Eugene James Chandler II</u> |
| (Use Date of Last Amended Judgment if Applicable) | ) | Defendant's Attorney            |

## Order Regarding Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(2)

Upon motion of ☒ the defendant ☐ the Director of the Bureau of Prisons ☐ the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion,

**IT IS ORDERED** that the motion is:

☐ DENIED. ☒ GRANTED and the defendant's previously imposed sentence of imprisonment (as reflected in the last judgment issued) of 140 months **is reduced to** 126 months.

### I. COURT DETERMINATION OF GUIDELINE RANGE (Prior to Any Departures)

|   |  |
|---|--|
| Previous Offense Level: <u>35</u>                         | Amended Offense Level: <u>34</u>                         |
| Criminal History Category: <u>VI</u>                      | Criminal History Category: <u>VI</u>                     |
| Previous Guideline Range: <u>292</u> to <u>365</u> months | Amended Guideline Range: <u>262</u> to <u>327</u> months |

### II. SENTENCE RELATIVE TO AMENDED GUIDELINE RANGE

- ☐ The reduced sentence is within the amended guideline range.
- ☒ The previous term of imprisonment imposed was less than the guideline range applicable to the defendant at the time of sentencing as a result of a departure or Rule 35 reduction, and the reduced sentence is comparably less than the amended guideline range.
- ☒ Other (explain): Mr. Harbison was originally sentenced to 140 months confinement which was 48% of the low end of the original guideline range for imprisonment. The defendant is eligible for a retroactive crack cocaine reduction. This results in a two-level reduction in base offense level for the quantity of drugs for which he was responsible (level 36). However, since he was found to be a career offender, the offense level for that finding is greater than the offense level for the quantity of cocaine base, and therefore, the higher offense level of 37 is applicable. Following a three-level reduction for acceptance of responsibility, the total offense level is 34.

### III. ADDITIONAL COMMENTS

Upon release from imprisonment, and absent a residential plan accepted by the U.S. Probation Officer prior to release from incarceration, it is ordered that as a condition of supervised release the defendant shall submit to the local Residential Reentry Center for a period not to exceed 90 days, with work release, at the direction of the U.S. Probation

Except as provided above, all provisions of the judgment dated 12/13/00 shall remain in effect.

**IT IS SO ORDERED.**

Order Date: November 17, 2008

Effective Date: \_\_\_\_\_  
(if different from order date)

  
\_\_\_\_\_  
Lacy H. Thornburg  
United States District Judge

